

REMARKS

Applicant appreciates the time taken by the Examiner to review Applicant's present application. This application has been carefully reviewed in light of the Official Action mailed December 10, 2003. Applicant respectfully requests reconsideration and favorable action in this case.

Rejections under 35 U.S.C. § 112

Claim 113 stands rejected under 35 U.S.C. § 112, first paragraph as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most closely connected to make and/or use the invention because "the structure of the compartments coupled by a strip of material is not understood in view of the original specification and drawings." Additionally, Claim 113 stands rejected as failing to comply with the written description requirement because, according to the Examiner, the compartments "coupled by a strip of material at the second end substantially distant from the impact surface" is not disclosed by the original disclosure and therefore constitutes new matter. Applicant points out that FIGURE 21 depicts the cavities as being near a second end of an elongated member distant from the impact surface and that in the third full paragraph of page 36 recites that "cavities may be joined by strips or pieces of material." Accordingly, Applicant submits that Claim 113 is supported by the specification. Furthermore, Applicant respectfully disagrees with the examiner with respect to enablement. One of ordinary skill in the art, at the time the application was filed would understand that two cavities or compartments in a grasping member can be joined by a strip or piece of material. Applicant, however, points out that the rejections are moot as Applicant has cancelled Claim 113.

Claim 103 has been amended as suggested by the Examiner to recite "said at least one cavity."

Objections Under 37 CFR 1.83(a)

Applicants submit that under 37 CFR 1.81(a) a drawing is only required where necessary for the understanding of the subject matter to be patented. Applicant believes that one of ordinary skill in the art would understand compartments "coupled by a strip of material at the second end substantially distant from the impact surface," the "compressible compartments filled with air disposed within the at least one cavity," the "compressible compartment filled with

air disposed within the two cavities”, and the “compartment filled with air disposed within the annular cavity.” Therefore, Applicant believes that a drawing showing these features is not required under 37 CFR 1.83(a). If the Examiner still disagrees, Applicant respectfully requests that the Examiner point out with specificity why these features require a drawing.

Applicants note that Claims 106, 112, 113 and 121 have been cancelled, removing the features from the claims. Applicants not acquiesce to the Examiner’s position that these features must be shown in a drawing, but have cancelled the claims because the cavities, which are shown in multiple Figures, can contain any material and be formed according to any manner, as would be understood by one of ordinary skill in the art, based on the disclosure and Figures as filed. In view of the cancellation of Claims 106, 112, 113 and 121, Applicant believes the objection to the Figures is now moot.

#### Rejections under 35 U.S.C. § 102

Claims 99-100, 103-105, 116-117, 120, 122-124 and 126 stand rejected as anticipated by U.S. Patent No. 5,355,553 (“Huang”).

Claims 99-100, 104-105, 107-108, 114-115, and 124 stand rejected as anticipated by U.S. Patent No. 2,884,969 (“’969 Lay”).

Claims 99-100, 102-105, 107-108, 110-111, 114-115, 124 and 126 stand rejected as anticipated by U.S. Patent No. 2,983,296 (“’296 Lay”).

Claim 99 has been amended to recite that “the at least one cavity has a minimum thickness proximate to an ideal pivot point of the hammering device”, claim 107 has been amended to recite that “at least one cavity has a minimum thickness proximate to an ideal pivot point of the hammering device” and Claim 116 has been amended to recite that “the annular cavity has a minimum thickness proximate to an ideal pivot point of the hammering device.” Each of these claims share the feature of a cavity having a minimum thickness near the ideal pivot point of the hammering device. Applicant submits that neither the Huang patent, the ‘969 Lay patent nor the ‘296 Lay Patent disclose a cavity that has a minimum thickness proximate to an ideal pivot point and consequently do not anticipate the present invention as recited in Claims 99, 107 and 116. Accordingly, Applicant respectfully requests allowance of Claims 99, 107, 116 and the respective dependent claims.

Rejections under 35 U.S.C. § 103

Claims 101 and 118 stand rejected as obvious over U.S. Patent No. U.S. Patent No. 5,355,552 ("Huang") in view of U.S. Patent No. 5,160,139 ("Soong"). Claims 102 and 119 stand rejected as obvious over U.S. Patent No. U.S. Patent No. 5,355,552 ("Huang") in view of U.S. Patent No. 4,738,166 ("Yamaguchi"). Claims 106, 113, 121 and 125 stand rejected as obvious over U.S. Patent No. U.S. Patent No. 5,355,552 ("Huang") in view of U.S. Patent No. 4,951,948 ("Peng"). Claims 101 and 109 are rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 2,983,296 ("296 Lay") in view of U.S. Patent No. 5,160,139 ("Soong"). Claims 106, 112, and 125 stand rejected as obvious over U.S. Patent No. 2,983,296 ("296 Lay") in view of U.S. Patent No. 4,951,948 ("Peng").

As discussed above, Claim 99 has been amended to recite that "the at least one cavity has a minimum thickness proximate to an ideal pivot point of the hammering device", claim 107 has been amended to recite that "at least one cavity has a minimum thickness proximate to an ideal pivot point of the hammering device" and Claim 116 has been amended to recite that "the annular cavity has a minimum thickness proximate to an ideal pivot point of the hammering device." Each of these claims share the feature of a cavity having a minimum thickness near the ideal pivot point of the hammering device.

The Huang patent teaches an air cushion grip with air cells in the grip. Applicant is unable to find any teaching or suggestion in Huang of a relationship between the thickness of the cells and the location of an ideal pivot point. Soong teaches a handle for sports equipment shafts, such as golf clubs that can be used with convention golf clubs. While Soong discloses that "media material farther from the pivot point will exert more force" Soong appears to be discussing the actual pivot point as opposed to the ideal pivot point of a conventional golf club. Applicant is unable to find any teaching or suggestion in Huang or Soong that a cavity should have a minimum thickness near an ideal pivot point. Yamaguchi teaches a hammer handle with axially extending passages which taper along the length of the grip, with the portions of the passages closer to the hammer head becoming more narrow. Yamaguchi however does not disclose any relationship between the thickness of the passages and the ideal pivot point of the hammer (i.e., that the passages should have a minimum thickness proximate to the ideal pivot point). The '296 Lay patent teaches a handle construction for a hammer that includes a clearance region 41 between wall of the grip and the web part of the grip portion. Applicant is unable to find a teaching or suggestion in the '296 Lay patent of a relationship between the

thickness of a cavity and the location of an ideal pivot point of the hammer. Peng teaches a shock absorbing baseball bat with what appears to be a solid handle portion 10 where the handle is gripped. There are small recesses in the handle portion, but these are located to receive a retaining collar joining the handle and the main body. See FIGURE 3. Again Applicant is unable to find a teach or suggestion in Peng that a cavity formed by a grasping member in a should have a minimum thickness proximate to an ideal pivot point.

Applicant respectfully submits that the cited references do not teach or suggest each of the claimed features the present invention as recited in each of the independent claims. More particularly, the cited references do not teach or suggest that a cavity formed by a grasping member should have a minimum thickness proximate to an ideal pivot point of a hammering device. If the Examiner disagrees, Applicant respectfully requests that the Examiner point out where this feature can be found in the cited references. Otherwise, Applicant respectfully requests allowance of all the pending claims.

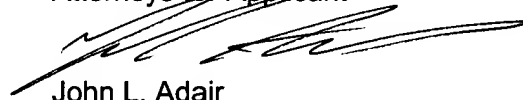
Applicant has now made an earnest attempt to place this case in condition for allowance. Other than as explicitly set forth above, this reply does not include an acquiescence to statements, assertions, assumptions, conclusions, or any combination thereof in the Office Action. For the foregoing reasons and for other reasons clearly apparent, Applicant respectfully requests full allowance of Claims 99-105, 107-111, 114-115, 116-120 and 122-123. The Examiner is invited to telephone the undersigned at the number listed below for prompt action in the event any issues remain.

An extension of one (1) month is requested and a Notification of Extension of Time Under 37 C.F.R. § 1.136 with the appropriate fee is enclosed herewith.

The Director of the U.S. Patent and Trademark Office is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 50-0456 of Gray Cary Ware & Freidenrich, LLP.

Respectfully submitted,

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